



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/800,769

03/15/2004

Aavishkar Bharara

161N10224

2653

7590

07/03/2007

Patrick W. Rasche  
Armstrong Teasdale LLP  
Suite 2600  
One Metropolitan Square  
St. Louis, MO 63102

EXAMINER

NGUYEN, VAN H

ART UNIT

PAPER NUMBER

2194

MAIL DATE

DELIVERY MODE

07/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/800,769

Applicant(s)

BHARARA, AAVISHKAR

Examiner

VAN H. NGUYEN

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 03/15/2004 and 02/21/2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This communication is responsive to the application filed 03/15/2004.

Claims 1-7 are currently pending in this application.

### **Oath/Declaration**

2. The Office acknowledges receipt of a properly signed Oath/Declaration submitted 03/15/2004.

### **Information Disclosure Statement**

3. The Applicants' Information Disclosure Statements, filed 03/15/2004 and 02/21/2007, have been received, entered into the record, and considered.

### **Specification**

4. Examiner requests that Applicant review the application carefully for informalities including typographical errors.

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

### **Descriptive Title Required**

The title of the invention is not descriptive. The title should be as "specific as possible" 37 CFR 1.72 while not exceeding "500 characters in length". The title should provide "informative value" and serve to aid in the "indexing, classifying, searching" and other Official identification functions. A new title is required that is clearly indicative of the invention to which the claims are directed. MPEP606.01

### **Applicant is reminded of the proper language and format for an abstract of the disclosure.**

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

*The language should be clear and concise and should not repeat information given in the title.* It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

## **Claim Rejections - 35 USC § 112**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**As to claim 1:**

- The term “a middletier” (line 4) renders the claim indefinite. It is not clear if it is referring to “a middletier” recited at line 3.
- The term “an application” (lines 5-6, and 11) renders the claim indefinite. It is not clear if it is referring to “an application” recited at line 3.
- The term “an object” (line 6) renders the claim indefinite. It is not clear if it is referring to “an object” recited at line 4.

**As to claim 3:**

The term “a user” renders the claim indefinite. It is not clear if it is referring to “a user” recited at claim 2.

**As to claims 6 and 7:**

The term “a middletier” renders the claim indefinite. It is not clear if it is referring to “a middletier” recited at claim 1.

### **Claim Rejections - 35 USC § 101**

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims do not fall within one of the four enumerated categories of patentable subject matter recited in section 101 (process, machine, manufacture or composition of matter).

Claims which are broad enough to read on statutory subject matter or on non-statutory subject matter are considered non-statutory. Cf. In re Lintner, 458 F.2d 1013, 1015, 173 USPQ 560, 562 (CCPA 1972) (“Claims which are broad enough to read on obvious subject matter are unpatentable even though they also read on nonobvious subject matter.”) During prosecution, applicant can amend to limit the claims to statutory subject matter.

### **Claim Rejections - 35 USC § 102**

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by **Mukundan et al.** (US 7146617 B2).

**As to claim 1:**

Mukundan teaches a multi-tier application architecture having a middletier comprising: a framework to mediate between an application and a middletier, wherein the framework allows a middletier to execute an object fetched by an application from a cache; wherein, when an object becomes stale, the framework repeatedly refreshes the object within a limited number of retries; wherein, when an object refresh succeeds, the framework returns the object to the cache and again allows the middletier to execute the object; and wherein, when an object refresh does not succeed within a limited number of retries, the framework quits an application in fail-safe way (see the Abstract; and col.8, line 42- col.11, line 5).

**As to claim 2:**

Mukundan teaches a user can specify the limited number of retries (see the col.9, lines 45-55 and col.16, line 32-col.18, line 14).

**As to claim 3:**

Mukundan teaches a user can specify a time interval between the retries (see the col.9, lines 45-55 and col.16, line 32-col.18, line 14).

**As to claim 4:**

Mukundan teaches the framework has its operations visualized to a user (see the col.9, lines 45-55 and col.16, line 32-col.18, line 14).

**As to claim 5:**

Mukundan teaches a watchdog to resume normal operations when the middletier crashes(see the col.9, lines 45-55 and col.16, line 32-col.18, line 14).

**As to claim 6:**

Mukundan teaches the watchdog recovers a middletier based on a result of periodical polling (see the col.9, lines 45-55 and col.16, line 32-col.18, line 14).



**As to claim 7:**

Mukundan teaches the watchdog recovers a middletier based on notification from the framework (see the col.9, lines 45-55 and col.16, line 32-col.18, line 14).

**Conclusion**

8. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure. Applicant should review these references carefully before responding to this office action.

**Contact Information**

9. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM-6:00PM. The examiner can also be reached on alternative Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM THOMSON can be reached at (571) 272-3718.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://padirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action should be mailed to:**  
Commissioner for patents  
P O Box 1450  
Alexandria, VA 22313-1450

  
**VAN H. NGUYEN**  
PRIMARY EXAMINER